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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:  
  
ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**FACEBOOK, INC.'S STATEMENT IN  
SUPPORT OF ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
APPELLATE RECORD OF APPEAL OF  
SPECIAL MASTER'S ORDER RE:  
DEPOSITIONS OF FORMER NAMED  
PLAINTIFFS**

Pursuant to Civil Local Rules 7-11 and 79-5, Facebook, Inc. (“Facebook”) hereby submits this Statement In Support of its Administrative Motion To File Under Seal Appellate Record Of Appeal Of Special Master’s Order Re: Depositions Of Former Named Plaintiffs. Dkt. 781. Facebook’s proposed redactions are limited to the same information that the Court has already sealed in this action. For the reasons stated below, there is good cause to permanently seal this information, and Facebook’s redactions are narrowly tailored.

## **I. Background**

On December 2, 2021, Special Master Daniel Garrie and Judge Gail Andler declared impasse on the issue of whether Facebook may be permitted to depose former Named Plaintiffs who were voluntarily dismissed. Appellate Record (Ex. A) at 003 ¶ 6. On December 7, 2021, Facebook submitted to JAMS its Motion To Depose Former Named Plaintiffs. *Id.* ¶ 7. On December 9, 2021, Plaintiffs submitted their Response, and on December 13, 2021, Facebook replied. *Id.* ¶¶ 8–9. On December 16, 2021, the Special Master issued an order resolving the parties’ dispute (the “Order”). *Id.* at 001–006.

On December 23, 2021, pursuant to the Order Appointing Special Discovery Master, Dkt. 709, Facebook filed a Notice of Appeal of the Special Master’s Order, Dkt. 782. With its appeal, Facebook attached an Appellate Record, which included all underlying documents before the Special Master. *See Swanson Decl. Ex. A.* Facebook filed an Administrative Motion To File Under Seal the Appellate Record, with the understanding that it would file supporting papers and proposed redactions by January 11, 2022. Dkt. 781. Facebook now submits this Statement In Support of the Administrative Motion To File Under Seal.

## **II. The Good Cause Standard Applies Because The Motion Is Unrelated To The Merits**

When a party seeks to seal judicial records related to the merits of a case, there is a “strong presumption in favor of” public access to the records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But this high standard does not apply where, as here, the information a party seeks to seal is “unrelated or only tangentially related to the merits of a case.” *Doe v. Walmart, Inc.*, 2019 WL 636362 at \* 1 (N.D. Cal. Feb. 11, 2019); *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court records attached only to non-

dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action.). Instead, courts seal information in non-dispositive motions so long as there is good cause to do so because public disclosure of the information would cause harm or prejudice, and the request is narrowly tailored. *Walmart*, at \*1–\*2. Here, the Appellate Record relates to a discovery dispute, not the merits of this action, so the good cause standard applies.

### III. There Is Good Cause To Seal The Same Information The Court Has Already Sealed

Facebook asks the Court to permanently seal the exact same information that it has already sealed from the public docket. Appellate Record at 220–24, 280–84, 335–39. Plaintiffs attached to their submission to the Special Master a copy of their September 28, 2020 Opposition To Facebook’s Request To Enforce The Partial Stay Of Discovery, Dkt. 526, which includes an exhibit to that filing that was leaked in violation of the protective order filed in *Six4Three LLC v. Facebook, Inc.*, No. CIV533328 (San Mateo Cnty. Sup. Ct.), Dkt. 526-3. After Plaintiffs filed their September 28, 2020 Opposition on the public docket, Facebook filed an Emergency Administrative Motion To Remove From The Public Docket And Seal these materials on the basis that Plaintiffs failed to redact sensitive and confidential information in their opposition brief and publicly filed a document leaked in violation of the protective order in *Six4Three*—which Facebook had separately produced in this action and designated as Highly Confidential – Attorneys’ Eyes Only—without Plaintiffs challenging Facebook’s confidentiality designation. Dkt. 530 at 2–3. Facebook proposed redactions to Plaintiffs’ opposition brief and moved to seal entirely the document leaked in *Six4Three*. Dkts. 530, 530-7.

The Court sealed from the public docket Plaintiffs’ opposition brief and the document leaked in *Six4Three*. Dkt. 534. The Court later ordered the parties to submit briefing regarding Facebook’s claim of confidentiality over documents leaked in *Six4Three*. Dkt. 621. After extensive briefing, Dkts. 643, 660, 681, the Court ordered that Plaintiffs “should not use any documents that were stolen in [*Six4Three*]” in this litigation. June 23, 2021 Hr’g Tr. 9:22–23. The Court also modified the Protective Order in this action to clarify that documents leaked in violation of the protective order in *Six4Three* would not lose their confidentiality due to their publication on the Internet. Dkt. 716.

Because Plaintiffs’ reattached these same materials to their submission to the Special Master, Facebook seeks the same relief and asks the Court to apply the same redactions to Plaintiffs’

1 Opposition To Facebook’s Request To Enforce The Partial Stay Of Discovery, Dkt. 526, and again  
2 seal the document leaked in *Six4Three*. Appellate Record at 220–24, 280–84, 335–39. The Court  
3 should seal these documents here just as it did originally. Facebook proposes the same redactions for  
4 these documents as those that exist on the public docket. *See* Dkt. 530-7. Facebook’s limited  
5 proposed redactions for these documents within the Appellate Record are narrowly tailored because  
6 they are limited to the same information already sealed on the public docket.

7 \* \* \*

8 For these reasons, Facebook respectfully requests that the Court seal permanently the same  
9 information that it has already sealed on the public docket.

1 Dated: January 11, 2021

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